Muniandy a/l Gangadurai v Institut Penyelidikan Getah Malaysia

HIGH COURT (KUALA LUMPUR) — CIVIL SUIT NO S6–24–66 OF 1999
ABDUL MALIK ISHAK J
2 MAY 2009

Administrative Law — Exercise of judicial functions — Rules of natural justice — Dismissal of public officer — Dismissal under provisions of Peraturan-Peraturan Tatakelakuan dan Tatatertib Bagi Pegawai-Pegawai Institut Penyelidikan Getah Malaysia — Whether court has jurisdiction to review suitability of punishment meted out by disciplinary tribunal — Whether court may substitute punishment ordered by disciplinary tribunal with its own measure of punishment

Labour Law — Employment — Dismissal — Claim for wrongful dismissal — Failure to attend work without any reason — Forged medical certificates produced by employee — Whether plaintiff had been accorded right to be heard — Whether dismissal justified

Public Servants — Disciplinary proceedings — Punishment — Dismissal — Whether court may vary or interfere with punishment meted out by disciplinary committee — Whether court may substitute punishment ordered by disciplinary tribunal with its own measure of punishment

The plaintiff was a boilerman and was a former employee of the defendant. A complaint was lodged by the complainant, Dato' Dr Ong Eng Long ('Dato' Dr Ong') that the plaintiff failed to attend work without any reason from 3 August 1991 until 13 August 1991. Dato' Dr Ong also complained that medical certificates produced by the plaintiff from the Klang Hospital were forged. Dato' Dr Ong had personally visited Klang Hospital to check the authenticity of the medical certificates and obtained confirmation that they were forged. By letter dated 4 October 1991, the plaintiff was informed by the defendant that a disciplinary action was to take place on 11 October 1991. The plaintiff was also given the opportunity to make a representation to exculpate himself within a period of fourteen days. The plaintiff responded to the charges by way of a representation. On 11 October 1991 the disciplinary action committee was convened. The plaintiff attended the

meeting and admitted that all the medical certificates were forged. Notwithstanding the admission, the disciplinary action committee obtained confirmation from the Klang Hospital on the forgery. The defendant was then informed that he was dismissed from service with effect from 1 November 1991. The plaintiff appealed against his dismissal but the defendant rejected the appeal. The plaintiff claimed that not a single witness from the defendant attended the disciplinary action committee hearing. Neither Dato' Dr Ong nor witness from the Klang Hospital were called at the hearing. The plaintiff therefore claimed that the decision making process of the disciplinary action committee that led to the plaintiff's dismissal was fatally flawed. According to the plaintiff there had been a flagrant disregard of the elementary rules of natural justice, in particular the audi alteram partem rule.

Held, dismissing the plaintiff's claim with costs:

(1) The procedures adopted by the defendant in dismissing the plaintiff were above board and followed closely the provisions of the Peraturan-Peraturan Tatakelakuan dan Tatatertib Bagi Pegawai-Pegawai Institut Penyelidikan Getah Malaysia ('RRIM Rules'). By virtue of r 26(4) of the RRIM Rules, there was no necessity for the disciplinary action committee to even consider the oral evidence of any witness. Yet, the disciplinary action committee considered the oral testimony of the plaintiff as reflected in the minutes of the disciplinary action committee (see para 33).

(2) The first charge against the plaintiff was for not attending work between 3 August 1991 to 13 August 1991. No proof was shown by the plaintiff that he was working on those days. The punch card for the month of August 1991 showed in reality that the plaintiff was absent on those days (see para 37).

(3) The hearing before the disciplinary action committee could not be regarded as a hearing in a court of law. The standards applicable to the judiciary should not be mechanically applied to administrators who sat in the disciplinary action committee. The procedures set out in the RRIM Rules must be complied with. The punishment meted out to the plaintiff by the disciplinary action committee could not be substituted by the court. Thus, following *Ng Hock Cheng v Pengarah Am Penjara & Ors* [1998] 1 MLJ 153, the punishment meted out to the plaintiff by the disciplinary action committee could not be disturbed. The disciplinary action committee was in the best position to judge the seriousness of the misconduct of the plaintiff and not the court (see paras 49 & 54).

(4) There was no flagrant breach of the rules of natural justice, in particular the audi alteram partem rule. There was compliance with the rules of natural justice. Not a scintilla of injustice against the plaintiff could be detected here. The disciplinary action committee was not even required to make a finding of guilt and was not even required to give reasons. The disciplinary action committee had assiduously followed the RRIM Rules and no fault should be laid on their door *Lembaga Tatatertib Perkhidmatan Awam Hospital Besar Pulau Pinang & Anor v Utra Badi K Perumal* [2001] MLJ referred (see paras 80 & 81).

[Bahasa Malaysia summary

Plaintif merupakan seorang atendan dandang dan bekas pekerja defendan. Satu aduan telah dibuat oleh pengadu, Dato' Dr Ong Eng Long ('Dato' Dr Ong') bahawa plaintif telah gagal untuk hadir bertugas tanpa sebab dari 3 Ogos 1991 hingga 13 Ogos 1991. Dato' Dr Ong juga mengadu bahawa sijil perubatan yang dikemukakan oleh plaintif daripada Hospital Klang telah dipalsukan. Dato' Dr Ong secara persendirian telah melawat Hospital Klang untuk memeriksa kesahan sijil perubatan tersebut dan mendapat maklumat bahawa sijil tersebut dipalsukan. Melalui surat bertarikh 4 Oktober 1991, plaintif telah dimaklumkan oleh defendan bahawa tindakan disiplin akan dijalankan/diadakan pada 11 Oktober 1991. Plaintif juga diberikan peluang untuk membuat bantahan bagi menyangkal tuduhan ke atasnya dalam tempoh empat belas hari. Plaintif menjawab tuduhan tersebut melalui representasi. Pada 11 Oktober 1991 jawatankuasa tindakan disiplin telah bersidang. Plaintif menghadiri mesyuarat tersebut dan mengaku bahawa semua sijil perubatan tersebut telah dipalsukan. Selain daripada pengakuan tersebut, jawatankuasa tindakan disiplin mendapat pengesahan daripada Hospital Klang berhubung dengan pemalsuan tersebut. Plaintif kemudiannya dimaklumkan bahawa dia telah dibuang kerja bermula dari 1 November 1991. Plaintif merayu terhadap pemecatannya tetapi defendan menolak rayuan tersebut. Plaintif mendakwa bahawa tidak terdapat sebarang saksi daripada defendan yang menghadiri perbicaraan jawatankuasa tindakan disiplin. Dato' Dr Ong atau saksi daripada Hospital Klang dipanggil pada perbicaraan tersebut. Plaintif oleh itu mendakwa bahawa proses membuat keputusan jawatankuasa tindakan disiplin yang membawa kepada pemecatan plaintif adalah cacat secara keseluruhan. Menurut plaintif terdapat pengabaian terang-terangan terhadap peraturan asas keadilan asasi, secara khususnya peraturan audi alteram partem.

Diputuskan, menolak tuntutan plaintif dengan kos:

(1) Prosedur-prosedur yang digunakan oleh defendan dalam memecat plaintif adalah dipatuhi dan peruntukan dalam Peraturan-Peraturan

Tatakelakuan dan Tatatertib Bagi Pegawai-Pegawai Institut Penyelidikan Getah Malaysia ('Peraturan-Peraturan RRIM') dipatuhi dengan teliti. Mengikut peraturan 26(4) Peraturan-Peraturan RRIM, tidak terdapat sebarang keperluan bagi jawatankuasa tindakan disiplin untuk mempertimbangkan keterangan lisan saksi. Lagipun, jawatankuasa tindakan disiplin mempertimbangkan testimoni lisan plaintif seperti yang dikemukakan dalam minit jawatankuasa tindakan disiplin (lihat perenggan 33).

(2) Tuduhan pertama terhadap plaintif adalah kerana tidak hadir bertugas antara 3 Ogos 1991 sehingga 13 Ogos 1991. Tiada bukti ditunjukkan oleh plaintif bahawa dia telah bertugas pada hari-hari tersebut. Kad ketip bagi bulan Ogos 1991 secara realitinya menunjukkan bahawa plaintif tidak hadir pada hari-hari tersebut (lihat perenggan 37).

(3) Perbicaraan di hadapan jawatankuasa tindakan disiplin tidak boleh dianggap sebagai perbicaraan dalam mahkamah undang-undang. Standard yang dikenakan kepada kehakiman bukan secara automatik dikenakan kepada pentadbir yang bersidang dalam jawatankuasa tindakan disiplin. Prosedur-prosedur yang dinyatakan dalam Kaedah-Kaedah RRIM mesti dipatuhi. Hukuman yang dikenakan pada plaintif oleh jawatankuasa tindakan disiplin tidak dapat digantikan oleh mahkamah. Oleh itu, menurut kes *Ng Hock Cheng v Pengarah Am Penjara & Ors* [1998] 1 MLJ 153, hukuman yang dikenakan ke atas plaintif oleh jawatankuasa tindakan disiplin tidak boleh diganggu-gugat. Jawatankuasa tindakan disiplin adalah pihak terbaik untuk mengadili keseriusan salah laku plaintif dan bukannya mahkamah (lihat perenggan 49 & 54).

(4) Tidak terdapat sebarang pelanggaran terang-terangan terhadap peraturan keadilan asasi, secara khususnya peraturan audi alteram partem. Terdapat pematuhan terhadap peraturan keadilan asasi. Tiada sebarang ketidakadilan terhadap plaintif yang dapat dikesan di sini. Jawatankuasa tindakan disiplin tidak diminta untuk mencari kesalahan dan memberikan alasan-alasan. Jawatankuasa tindakan disiplin dengan teliti telah mengikut Peraturan-Peraturan RRIM dan mereka tidak sepatutnya dipersalahkan. *Lembaga Tatatertib Perkhidmatan Awam Hospital Besar Pulau Pinang & Anor v Utra Badi a/l K Perumal* [2001] 2 MLJ 417 dirujuk (lihat perenggan 80 & 81).]

Notes

For cases on dismissal, see 8(1) *Mallal's Digest* (4th Ed, 2006 Reissue) paras 920–953.

For cases on punishment under disciplinary proceedings, see 8(1) *Mallal's Digest* (4th Ed, 2009 Reissue) paras 946–947.

For cases on rules of natural justice, see 1 *Mallal's Digest* (4th Ed, 2005 Reissue) paras 140–141.

Cases referred to

B Surinder Singh Kanda v The Government of the Federation of Malaya [1962] MLJ 169; [1962] AC 322, PC (refd)
Board of Education v Rice & Ors [1911] AC 179, HL (refd)
Breen v Amalgamated Engineering Union & Ors [1971] 2 QB 175, CA (refd)
Chong Kok Lim & Ors v Yong Su Hian [1979] 2 MLJ 11, FC (refd)
Cooper v The Board of Works for the Wandsworth District (1863) 14 CB (NS) 180; 143 ER 414; (refd)
Davies v Price & Ors [1958] 1 WLR 434, CA (refd)
District Plantation Services Sdn Bhd v Ahmad Nazri Adnan & Anor [2001] 1 CLJ 25, HC (refd)
Dixon v Commonwealth of Australia (1981) 3 ALD 289; [1981] 61 ALR 173 (refd)
Ex parte Fry [1954] 1 WLR 730, CA (refd)
Ghazi bin Mohd Sawi v Mohd Haniff bin Omar, Ketua Polis Negara, Malaysia & Anor [1994] 2 MLJ 114, SC (refd)
Gill Lumber Chipman (1973) Ltd v United Brother-hood of Carpenters and Joiners of America Local 2142 (1973) 42 DLR (3d) 271 (refd)
Glendenning Motorways Inc v Royal Transportation Ltd (1975) 59 DLR (3d) 89 (refd)
Lembaga Jurutera Malaysia v Leong Pui Kun [2009] 2 MLJ 36; [2002] 4 AMR 4631, FC (refd)
Lembaga Tatatertib Perkhidmatan Awam Hospital Besar Pulau Pinang & Anor v Utra Badi a/l K Perumal [2001] 2 MLJ 417; [2001] 2 CLJ 525, FC (refd)
Leong Pui Kun v Lembaga Jurutera Malaysia [2002] 4 AMR 4631, HC (refd)
Malloch v Aberdeen Corporation [1971] 1 WLR 1578, HL (refd)
Minister of National Revenue v Wrights' Canadian Ropes, Limited [1947] AC 109, PC (refd)
Najar Singh v Government of Malaysia & Anor [1976] 1 MLJ 203, PC (refd)
Nakkuda Ali v MF De S Jayaratne [1951] AC 66, PC (refd)
Ng Hock Cheng v Pengarah Am Penjara & Ors [1998] 1 MLJ 153; [1998] 1 CLJ 405, FC (folld)
Pepys v London Transport Executive [1975] 1 WLR 234, CA (refd)
Raja Abdul Malek Muzaffar Shah bin Raja Shahruzzaman v Setiausaha Suruhanjaya Pasukan Polis & Ors [1995] 1 MLJ 308, CA (refd)
Regina v Gaming Board for Great Britain, Ex parte Benaim and Khaida [1970] 2 QB 417, CA (refd)
Regina v Metropolitan Police Commissioner, Ex parte Parker [1953] 1 WLR 1150, QBD (refd)
Ridge v Baldwin & Ors [1964] AC 40, HL (refd)
Rosenberg v British Columbia Turkey Marketing Board, Ex parte Rosenberg (1967) 61 DLR (2d) 447 (refd)

Schmidt & Anor v Secretary of State for Home Affairs [1969] 2 Ch 149, CA (refd)
Tan Teck Seng @ Tan Chee Meng v Suruhanjaya Perkhidmatan Pendidikan & Anor [1996] 1 MLJ 261; [1996] 2 CLJ 771, CA (refd)
Vidyodaya University of Ceylon & Ors v Silva [1964] 3 All ER 865, PC (refd)
Wilkinson v Barking Corporation [1948] 1 KB 721, CA (refd)
Zainal bin Hashim v Government of Malaysia [1979] 2 MLJ 276, PC (refd)

Legislation referred to
Federal Constitution art 135(2)
Internal Security Act 1960 s 8(1)(a)
Public Officers (Conduct and Discipline) (Chapter D) General Orders 1980

A Mageson (A Sivanesan & Co) for the plaintiff.
Roziana Yusof (Abdul Shukor & Roziana) for the defendant.

Abdul Malik Ishak J (now JCA):

[1] After a full trial, I dismissed the plaintiff's claim with costs. I now give my reasons for doing so.

[2] The plaintiff was a boilerman and was a former employee of the defendant (the Rubber Research Institute Experiment Station situated at Sungai Buloh, Selangor). There was a complaint lodged by the complainant in the person of Dato' Dr Ong Eng Long ('DW1') ('Dato' Dr Ong') to the effect that the plaintiff failed to attend work without any reason from 3 August 1991 until 13 August 1991. Dato' Dr Ong also complained that medical certificates produced by the plaintiff for 24 July 1991, 30 July 1991, 31 July 1991, 3 August 1991, 5 August 1991 right up to 9 August 1991 from the Klang Hospital were forged. Dato' Dr Ong personally visited the Physiotherapy Department of the Klang Hospital on 13 August 1991 to check the authenticity of the medical certificates and the physiotherapist on duty confirmed that they were forged.

[3] Dato' Dr Ong's complaint dated 13 August 1991 addressed to the 'Pegawai Kakitangan' was marked as exh 'D13' and, in its original Malay language text, it was worded in this way:

> TIDAK HADIR BERTUGAS TANPA CUTI / PEMALSUAN SIJIL SAKIT
>
> Dimaklumkan bahawa Encik G Muniandy, seorang kakitangan di Bahagian ini didapati tidak hadir bertugas dari 3 Ogos, 1991 sehingga ke hari ini. Pada tarikh 12 Ogos, sijil sakit untuk tarikh-tarikh 3, 5, 6, 7, 8 dan 9 Ogos telah diserahkan oleh anak beliau kepada kerani di Bahagian ini. Sijil-sijil ini telah dikeluarkan oleh Ahli Fisioterapi Hospital Besar Tengku Ampuan Rahimah, Kelang.

Setelah disemak dengan pegawai petugas di Bahagian Fisioterapi di hospital tersebut pada tarikh 13 Ogos, didapati kali akhir Encik G. Muniandy berada di Bahagian itu ialah 2 Ogos (lampiran A). Menurut pegawai itu lagi, sijil-sijil sakit bertarikh 3, 5, 6, 7, 8 dan 9 tidak dikeluarkan oleh pihak beliau dan terdapat beberapa pemalsuan di dalam sijil-sijil tersebut

Encik G. Muniandy juga telah menghantar sijil-sijil sakit bertarikh 24, 30 dan 31 Julai yang dikeluarkan oleh Hospital Besar Kelang. Menurut rekod pegawai perubatan, beliau tiada di situ pada tarikh-tarikh berkenaan.

Perkara ini dianggap satu kes penipuan yang serius dan saya terpaksa membawa ke pengetahuan pihak puan dan mencadangkan supaya tindakan tatatertib diambil ke atas beliau.

'BERKHIDMAT UNTUK NEGARA'

Sgd:

(Illegible)

(DR ONG ENG LONG)

Ketua Bahagian Fizik dan Kejuruteraan.

[4] The witness statement of Dato' Dr Ong makes for an interesting reading material. In his witness statement, the good doctor alluded to the plaintiff's absence from work from 3 August 1991 until 13 August 1991 and this was what he said (see exh 'D12'):

13. Q: After 2nd August 1991, did plaintiff attend to his duty?

    A: No, he was absent from 3rd of August 1991 until 13th August 1991.

14. Q: Did plaintiff give any reason for his absence?

    A: Yes, he submitted a medical certificate.

[5] In regard to the forged medical certificates from the Klang Hospital, Dato' Dr Ong had this to say in his witness statement:

15. Q: Could you please refer to page 1 of the Non-Agreed Bundle (3), and explain to the Court what are these documents?

    A: The documents are the medical slips from the Physiotherapy Department of Tengku Ampuan Rahimah Hospital, Klang.

16. Q: Were these the medical slips he submitted?

    A: Yes.

17. Q: After you received the medical slips what was the action taken by you?

    A: I felt suspicious with (the) medical slips produced by the plaintiff

A and (I) have checked with the Physiotherapy Department of Tengku Ampuan Rahimah Hospital, Klang.

18. Q: What was the result of the enquiry?

A: I was informed that the medical slips were forged.

B

19. Q: Please tell this Court who gave you the confirmation that the medical slips were forged?

A: The Physiotherapist from the Physiotherapy Department of Tengku Ampuan Rahimah Hospital, Klang.

C

20. Q: Please refer to pages 8 & 9 of the Non-Agreed Bundle (2), is this (the) report that you received from the Physiotherapist?

A: Yes.

D 21. Q: Could you explain to this Court what the report was?

A: The report shows that the date plaintiff attended the physiotherapy treatment and the last (time) plaintiff attended was on the 2nd of August 1991.

E 22. Q: After you have received the report from the Hospital what action was taken by you?

A: I have written a memo dated 13 August 1991 to Pegawai Kakitangan.

F 23. Q: Please refer to page 1 of the Non-Agreed Bundle (2), do you recognise this document?

A: Yes, I recognise this document.

24. Q: Who issued the memo?

G

A: I issued the memo.

25. Q: Please tell this court what is the document?

A: The document is a memo informing Pegawai Kakitangan, that H Mr Muniandy a/l Gangadurai was absent from his duty from 3rd August 1991 until 13th August 1991 and he had produced medical slips dated 3, 4, 5, 6, 7, 8 and 9 of August 1991. After checking with the Physiotherapy Department of Tengku Ampuan Rahimah Hospital, Klang, I (was) informed that the medical slips were forged. This is a I serious wrongful act and (I have) recommended to (the) Pegawai Kakitangan to take disciplinary action against him.

[6] Indeed a disciplinary action was taken against the plaintiff by the defendant.

[7] By letter dated 4 October 1991, the plaintiff was informed by the defendant that a disciplinary action was to take place on 11 October 1991 at 3pm at Bilik Mesyuarat Penolong–Penolong Pengarah at which time and place the plaintiff was to 'standby' in the event he would be required to give an explanation to the disciplinary action committee. That letter dated 4 October 1991 was marked as exh 'D8' and it was drafted in the original Malay language text in this way:

MESYUARAT TINDAKAN TATATERTIB

Adalah dimaklumkan bahawa Mesyuarat Tindakan Tatatertib akan diadakan pada 11hb Oktober 1991, jam 3.00 petang di Bilik Mesyuarat Penolong-Penolong Pengarah.

2. Oleh yang demikian, tuan adalah dikehendaki berada di Bangunan Penolong–Penolong Pengarah pada hari tersebut bagi tujuan 'standby' jika diperlukan untuk memberi penjelasan kepada ahli-ahli Jawatankuasa Tindakan Tatatertib.

Sekian, harap maklum.

'BERKHIDMAT UNTUK NEGARA'

Sgd: (Illegible)

(ISHAK HAJI WAHAB)

Seksyen Perjawatan & Kemajuan Kakitangan.

[8] The charges framed against the plaintiff were in pursuant to the complaint by Dato' Dr Ong. The charges can be found in exh 'D2' dated 3 September 1991 and they were worded in its original Malay language text as follows:

Ruj RRIP(J) 682

Pertuduhan Bagi Maksud Mengambil Tindakan Tatatertib Dengan Tujuan Buang Kerja Di Bawah Peraturan-Peraturan Tatakelakuan dan Tatatertib Bagi Pegawai-Pegawai Institut Penyelidikan Getah Malaysia, Peraturan 26, Peraturan-Peraturan RRIM (Kelakuan dan Tatatertib) 1989

Satu laporan telah dikemukakan kepada pihak Jawatankuasa Tindakan Tatatertib RRIM yang menyatakan bahawa tuan, Muniandy a/l Gangadorai, Atendan Dandang (D42) di Bahagian Fizik dan Kejuruteraan telah didapati berkelakuan yang boleh diertikan sebagai melanggar Peraturan-Peraturan RRIM (Kelayakan dan Tatatertib) 1989 dan membolehkan tindakan tatatertib diambil terhadap tuan atas pertuduhan seperti berikut:

PERTUDUHAN

Bahawa tuan, Muniandy a/l Gangadorai, pemegang Kad Pengenalan No 8100433 semasa bertugas sebagai Atendan Dandang, di Bahagian Fizik dan Kejuruteraan telah melakukan kesalahan-kesalahan seperti berikut:-

(1) telah tidak hadir bertugas pada:

03 Ogos 1991–13 Ogos 1991; dan

(2) telah mengemukakan sijil-sijil cuti sakit yang palsu untuk tarikh-tarikh 24/7/91, 30/7/91, 31/7/91, 3/8/91, 5/8/91 – 9/8/91.

Oleh yang demikian, tuan telah melakukan kesalahan melanggar Peraturan-Peraturan RRIM 21(4), Peraturan-Peraturan RRIM (Kelakuan dan Tatatertib) 1989–yang bermaksud iaitu 'Tidak Hadir Bertugas Tanpa Cuti atau tanpa mendapat kebenaran terlebih dahulu dan tanpa sebab yang munasabah selama tempoh lebih daripada 7 hari yang boleh diambil tindakan tatatertib termasuk bertujuan buang kerja atau turun pangkat.' Di samping itu perlakuan tuan itu boleh diertikan sebagai telah melanggar peraturan-peraturan 4(2)(a), 4(2)(b), 4(2)(d), 4(2)(f) dan 4(2)(g) Peraturan-Peraturan RRIM (Kelakuan dan Tatatertib) 1989;

4(2) Seseorang pegawai tidak boleh:-

(a) membelakangkan kewajipannya kepada RRIM kerana kepentingan persendiriannya;

(b) berkelakuan dengan sedemikian cara yang mungkin menyebabkan kepentingan persendiriannya bercanggah dengan kewajipannya kepada RRIM;

(d) berkelakuan dengan sedemikian cara hingga menjatuhkan reputasi perkhidmatan RRIM atau menghilangkan kepercayaan terhadap perkhidmatannya dalam RRIM;

(f) tidak jujur;

(g) tidak bertanggungjawab.

Jika tuan didapati bersalah, tuan boleh dihukum mengikut Peraturan-Peraturan 36, Hukuman Tatatertib, Peraturan-Peraturan RRIM (Kelakuan dan Tatatertib) 1989.

2. Mengikut Peraturan RRIM 26, Peraturan-Peraturan RRIM (Kelakuan dan Tatatertib) 1989, tuan adalah diminta membuat satu representasi secara bertulis yang mengandungi alasan-alasan yang tuan hendak gunakan untuk membebaskan diri tuan. Representasi ini hendaklah dibuat dalam tempoh empat belas (14) hari daripada tarikh tuan menerima surat ini. Sekiranya tuan tidak membuat representasi tersebut dalam tempoh yang ditetapkan itu, tuan akan dianggap sebagai tidak berhajat untuk membela diri dan perkara ini akan terus diputuskan oleh Jawatankuasa Tindakan Tatatertib RRIM dengan berdasarkan keterangan-keterangan yang ada sekarang ini sahaja.

3. Sila tuan akui penerimaan surat ini.

Sekian.

'BERKHIDMAT UNTUK NEGARA'

Sgd: (Illegible)

(DR. SAMSUDDIN BIN TUGIMAN)

Pengerusi Jawatankuasa

Tindakan Tatatertib RRIM.

[9] The last paragraph of exh 'D2' gave the plaintiff the opportunity, within a period of fourteen days from the date of receipt of 'D2', to make a representation setting out the reasons to exculpate himself. On 6 September 1991 there was proof that the plaintiff received exh 'D2'. The acknowledgment of exh 'D2' can be seen in exh 'D3' and it was worded in this way (in the original Malay language text):

AKUAN TERIMA

Dengan ini saya mengesahkan bahawa saya telah menerima surat tuan bil: RRIP(J) 682 bertarikh 3hb September, 1991.

Tarikh 6/9/91

Sgd: (Illegible)

T/tangan

Nama: G Muniandy.

[10] On 10 September 1991 as per exh 'D4', the plaintiff responded to the charges by way of a representation. This was what the plaintiff wrote:

G Muniandy

PED

Sg Buloh

10hb September, 1991

Pengerusi, Jawatankuasa Tindakan Tatatertib, RRIM

Tuan,

Pertuduhan Bagi Maksud Mengambil Tindakan Tatatertib Dengan Tujuan Buang Kerja Di Bawah Peraturan-Peraturan Tatakelakuan dan Tatatertib Bagi Pegawai-Pegawai Institut Penyelidikan Getah Malaysia, Peraturan 26, Peraturan-Peraturan RRIM (Kelakuan dan Tatatertib) 1989

Saya ingin merujuk kepada surat tuan yang bertarikh 3hb September, 1991 mengenai perkara di atas.

Saya terbabit di dalam satu kemalangan pada 15hb January, 1990 dan kaki saya telah patah. Saya dibedahkan dengan sekeping besi dicantumkan kepada kaki saya. Dari masa itu saya pergi dengan kerapnya untuk 'check-up' di Hospital Besar, Klang.

Mengenai tempoh yang disebut di dalam surat tuan, saya diberi cuti sakit yang dikeluarkan oleh Hospital Besar, Klang dan sijil cuti sakit itu dikemukakan kepada Ketua Bahagian saya (PED).

A Saya hendak menerang di sini bahawa sijil cuti sakit saya dikeluarkan oleh Hospital Besar, Klang dan adalah salah untuk berkata bahawa sijil-sijil ini adalah tipu.

Saya harap jawapan saya dapat diterima oleh tuan.

Yang benar,

B Sgd: (Illegible).

[11] According to the defendant, exh 'D4' was received by the defendant on 21 September 1991 — way beyond the fourteen days time limit calculated C from 6 September 1991. The delay was only for two days. Quite insignificant. But there was a delay, so submitted learned counsel for the defendant. But the disciplinary action committee was quite magnanimous. They considered exh 'D4' in its deliberation.

D **[12]** On 11 October 1991 at 3pm at the designated place, the disciplinary action committee was convened. The following personalities conducted the meeting (see the minutes of the disciplinary action committee dated 11 October 1991 marked as exh 'D18A'):

E

(i)	Dr. Samsudin Tugiman Timbalan Pengarah (Pembangunan)	Chairman
(ii)	Tuan Haji Shariff Kudin Penolong Pengarah Jabatan Kemajuan dan Pengembangan	Member
(iii)	Encik Chin Hong Cheaw Ketua Bahagian Analisis Kimia	Member
(iv)	Encik Ishak bin Hj. Wahab Seksyen Perjawatan dan Kemajuan Kakitangan	Secretariat
(v)	Puan Zaimunah binti Harun Seksyen Perjawatan dan Kemajuan Kakitangan	Secretariat

F

G

[13] The continuing minutes of the disciplinary action committee dated 11 October 1991 marked as exh 'D18B' showed that the plaintiff attended the meeting and admitted that all the medical certificates were forged ('mengaku bahawa semua surat-surat pengesahan rawatan yang dikemukakan H adalah dipalsukan'). I will now reproduce verbatim exh 'D18B' in its original Malay language text:

PERKARA-PERKARA BERBANGKIT

I 1.2 Kes No 5/91 (Kumpulan D)

ENCIK G MUNIANDY

Atendan Dandang Bhg Fizik dan Kejuruteraan

Bhg Fizik dan Kejuruteraan

1.2.1 Kertas kerja di atas telah dibentang dan dibincangkan dalam mesyuarat.

1.2.2 Asas-Asas Keputusan

(i) Jawatankuasa Tindakan Tatatertib mendapati penama telah tidak hadir bertugas tanpa cuti atau tanpa mendapat kebenaran terlebih dahulu atau tanpa sebab yang munasabah selama 11 hari di bawah Peraturan 21(4), Peraturan-Peraturan RRIM (Kelakuan dan Tatatertib) 1989 pada tarikh–tarikh seperti berikut:-

3 Ogos 1991–13 Ogos 1991 = 11 hari

Dan memalsukan surat pengesahan rawatan Hospital Besar Tengku (Ampuan Rahimah), Klang untuk tarikh-tarikh 24hb, 30hb, 31hb Julai 1991, 3hb, 5hb hingga 9hb Ogos, 1991.

(ii) Semasa disoal siasat oleh Ahli Jawatankuasa Encik G Muniandy mengaku bahawa semua surat-surat pengesahan rawatan yang dikemukakan adalah dipalsukan.

(iii) Walau bagaimanapun, Jawatankuasa mengesyorkan supaya pihak urusetia mendapatkan pengesahan daripada pihak Hospital Besar Tengku Ampuan Rahimah, Kelang bersabit dengan pemalsuan surat-surat pengesahan rawatan tersebut.

(iv) Mesyuarat telah memutuskan bahawa ketidakhadiran beliau untuk bertugas dan pemalsuan surat pengesahan rawatan Hospital Besar boleh diertikan sebagai melanggar Peraturan 4(2)(a), 4(2)(b), 4(2)(d), 4(2)(f) dan 4(2)(g), Peraturan-Peraturan RRIM (Kelakuan dan Tatatertib) 1989.

4(2) Seseorang pegawai tidak boleh;

(a) membelakangkan kewajipannya kepada RRIM kerana kepentingan persendiriannya;

(b) berkelakuan dengan sedemikian cara yang mungkin menyebabkan kepentingan persendiriannya bercanggah dengan kewajipannya kepada RRIM;

(d) berkelakuan dengan sedemikian cara hingga menjatuhkan reputasi perkhidmatan RRIM atau menghilangkan kepercayaan terhadap perkhidmatannya dalam RRIM;

(f) tidak jujur;

(g) tidak bertanggungjawab;

1.12Hukuman

Oleh itu, Jawatankuasa Tindakan Tatatertib mengesyorkan hukuman BUANG KERJA terhadap ENCIK G MUNIANDY, Pencatat di Bahagian Fizik dan Kejuruteraan mulai 1hb November, 1991 mengikut Peraturan 36(i), Peraturan-Peraturan RRIM (Kelakuan dan Tatatertib) 1989.

[14] It appears that the disciplinary action committee was quite cautious. Notwithstanding the admission of the plaintiff as to the forged medical certificates, the disciplinary action commitee noted that confirmation from the Klang Hospital needs to be secured. The confirmation came. But it was by way of a letter dated 23 September 1993 as seen at p 7 to bundle 'D' and it was worded as follows (in its original Malay language text):

HOSPITAL BESAR TENGKU AMPUAN RAHIMAH,

41200 KLANG,

SELANGOR DARUL EHSAN

Ruj Kami: (1) dlm JPA 93

Tarikh: 23.9.93

Jabatan Fisioterapi

HBTAR Klang.

Kepada sesiapa yang berkenaan

Dimaklumkan pesakit G Muniandy K/P 8100433 telah datang ke Jabatan ini untuk menerima rawatan Fisioterapi.

1. 3 July 1991
2. 8 July 1991
3. 10 July 1991
4. 12 July 1991
5. 25 July 1991
6. 26 July 1991
7. 2 Aug 1991

Sekian untuk makluman pehak tuan.

Saya yang menjalankan tugas,

Sgd: (Illegible)

(Mohd Zakaria Bin Idris)

Ahli Fisioterapi Y/M
Jabatan Fisioterapi Hospital Besar
Tengku Ampuan Rahimah Klang.

[15] This letter from the Klang Hospital dated 23 September 1993 was received by the defendant on 24 September 1993.

[16] And from the Physiotherapy Department of the Klang Hospital, the records marked as exh 'D6' showed that the plaintiff visited the physiotherapist on 8 July 1991, 10 July 1991, 12 July 1991, 25 July 1991, 26 July 1991 and 2 August 1991. Interestingly, there was also an annotation in handwritten form which stated that:

Patient (referring to the plaintiff) was last seen in this department on 2.8.91.
Sgd: (Illegible)
Ahli Fisioterapi Hospital Besar
Tengku Ampuan Rahimah, Klang.

[17] By way of a memo dated 24 October 1991 addressed to the plaintiff as seen in exh 'D10', the defendant informed the plaintiff that he has been dismissed from service with effect from 1 November 1991. The memo in exh 'D10' was worded in this way (in its original Malay language text):

TINDAKAN TATATERTIB

Adalah dimaklumkan bahawa setelah menimbangkan dengan teliti syor-syor Jawatankuasa Tindakan Tatatertib, Pengarah telah mengambil keputusan bahawa tuan didapati bersalah kerana telah tidak hadir bertugas tanpa cuti atau tanpa mendapat kebenaran terlebih dahulu atau tanpa sebab yang munasabah dari 3hb Ogos, 1991 hingga 13hb Ogos, 1991 dan memalsukan surat pengesahan rawatan Hospital Besar Tengku Ampuan Rahimah, Klang. Perlakuan tuan boleh diertikan sebagai melanggar Peraturan-Peraturan 4(2)(a), 4(2)(b), 4(2)(d), 4(2)(f) dan 4(2)(g), Peraturan-Peraturan RRIM (Kelakuan dan Tatatertib) 1989;

(1)

(a) membelakangkan kewajipannya kepada RRIM kerana kepentingan persendiriannya;

(b) berkelakuan dengan sedemikian cara yang mungkin menyebabkan kepentingan persendiriannya bercanggah dengan kewajipannya kepada RRIM;

(d) berkelakuan dengan sedemikian cara hingga menjatuhkan reputasi perkhidmatan RRIM atau menghilangkan kepercayaan terhadap perkhidmatan-nya dalam RRIM;

(f) tidak jujur;

(g) tidak bertanggungjawab.

Dengan ini tuan dikenakan hukuman BUANG KERJA dari perkhidmatan RRIM berkuatkuasa pada 01hb November, 1991 di bawah Peraturan 36(i), Peraturan-Peraturan RRIM (Kelakuan dan Tatatertib) 1989.

Sila beri akuan penerimaan surat ini dengan menandatangani kad yang berlampir dan kembalikan kepada Seksyen Perjawatan dan Kemajuan Kakitangan RRIM dengan kadar segera.

'BERKHIDMAT UNTUK NEGARA'

Sgd: (Illegible)

ISHAK HAJI WAHAB)

Seksyen Perjawatan dan Kemajuan Kakitangan

s.k.

Penolong Pengarah (Kimia & Teknologi)

Ketua PED

Pegawai Penjaga Seksyen Akaun

Pegawai Tadbir

Pegawai Kakitangan.

[18] By way of a letter dated 30 October 1991 as seen in exh 'D11', the plaintiff acknowledged receipt of the defendant's memo dated 24 October 1991 as per exh 'D10', and the plaintiff also appealed against his dismissal and sought for a lighter sentence. The plaintiff's first appeal letter in exh 'D11' was worded in this way (in its original Malay language text):

Pengarah,

30 OCT 1991

I.P.G.M.

Melalui Ketua P.E.D.

Tuan,

RAYUAN TERHADAP PEMBUANGAN KERJA

Saya telah menerima surat tuan bertarikh 24hb Oktober, 1991 menamatkan perkhidmatan saya dengan Institut berkuatkuasa mulai 01hb November, 1991. Sebab-sebabnya pemberhentian perkhidmatan ialah kerana saya telah tidak datang bertugas tanpa cuti atau sebab-sebab yang munasabah antara 30hb Julai hingga 13hb Ogos, 1991 dan saya telah memalsukan Sijil Perubatan dari Hospital Besar Tengku Ampuan Rahimah, Klang.

Sebagaimana yang dinyatakan di bawah Sek 47 Peraturan-Peraturan Tatakelakuan dan Tatatertib Bagi Pegawai-Pegawai Institut Penyelidikan Getah Malaysia, saya ingin mengemukakan rayuan untuk meringankan dan memberi hukuman yang ringan sebagaimana yang dinyatakan di bawah Sek 36 Peraturan tersebut. Saya sekarang ini sedar di atas kesilapan saya itu dan ingin mengemukakan sebab-sebab sebagai pertimbangan;

(1) Saya telah berkhidmat selama lebih kurang 18 tahun dan saya sekarang ini berumur 42 tahun;

(2) Masalah kesihatan saya cuma berbangkit di awal tahun 1990 selepas saya terlibat dengan satu kemalangan jalanraya dan menyebabkan saya telah dirawat di hospital lebih kurang satu bulan dan telah diberi cuti perubatan selama 6 bulan;

(3) Ekoran dari kejadian ini saya telah menderita dan pada tahun 1991 Klinik Reddy telah merujukkan perkara saya ini ke Hospital Besar Tengku Ampuan Rahimah, Klang untuk siasatan lanjut dan satu pembedahan telah dijalankan untuk mengeluarkan plate besi dari lutut saya.

(4) Disebabkan tidak tahan menderita kesakitan ini saya telah membuat/mengambil tindakan yang menyebabkan masalah ini berbangkit.

(5) Saya mempunyai 2 orang anak dan mereka sedang bersekolah. Pendapatan isteri saya tidak mencukupi untuk menanggung keluarga kami. Tambahan pula keadaan kesihatan saya tidak membenarkan menjalankan kerja-kerja yang berat.

(6) Sekiranya diberi hukuman yang ringan dan membolehkan saya meneruskan khidmat saya, saya berjanji akan bersara secara optional agar pencen saya tidak dibatalkan dan saguhati yang saya berhak tidak akan hilang sekiranya saya diberhentikan dari perkhidmatan saya ini. Segala saguhati ini akan membantu saya sebab saya tidak mungkin bekerja lebih lama lagi. Saya percaya tuan akan memberi pertimbangan terhadap rayuan saya ini dan memberi peluang kepada saya untuk memulakan semula peluang saya di masa hadapan.

Terima kasih.

Yang benar,

Sgd: (Illegible)

G. Muniandy

s.k.

Penolong Pengarah (Kimia & Teknologi)

Ketua P.E.D.

Pegawai Kakitangan.

[19] In exh 'D11', there is a sentence which showed that the plaintiff realised his folly and that sentence was worded in this way, 'Saya sekarang ini sedar di atas kesilapan saya'. It can be surmised that the plaintiff knew that what he did was wrong and he was seeking for forgiveness and he threw himself at the mercy of the defendant. But, there was no response from the defendant.

[20] Undaunted, the plaintiff, again by way of a letter dated 4 November 1991 marked as exh 'D19', sent a second letter of appeal to the defendant which was worded as follows (in its original Malay language text):

G Muniandy,

4/11/91

Bahagian Fizik dan Kejuruteraan,

Pusat Teknologi,

Stesen Percubaan RRIM,

Sungai Buloh

Selangor.

Pengarah,

I.P.G.M.

Melalui Ketua P.E.D.

Tuan,

Per: Rayuan terhadap pembuangan kerja G Muniandy

Perkara di atas adalah dirujuk dalam mana saya telah difahamkan bahawa hak saya sebagai seorang pekerja di Institute tuan telah dipecatkan bermula dari 1/11/91.

Selaras dengan peruntukan Sek 47 Peraturan-Peraturan Tatakelakuan dan Tatatertib, dengan ini saya memohon dan merayu agar pihak tuan dapat mempertimbangkan keputusan tuan membuangkan kerja saya atas alasan-alasan berikut:–

(1) Saya telah berkhidmat di Jabatan tuan sejak tahun 1974.

(2) Sehingga kini tiada masaalah yang timbul atau aduan terhadap saya.

(3) Masaalah kesihatan saya, hanyalah timbul di awal tahun 1990 selepas saya terlibat dengan satu kemalangan Jalanraya yang mana segala repotnya telah saya bekalkan kepada pihak tuan.

(4) Disebabkan tidak tahan kesakitan saya telah diberi cuti sakit selama 6 bulan.

(5) Saya mempunyai 2 orang anak yang kecil dan masih bersekolah. Pendapatan isteri saya yang kecil tidak mencukupi untuk menanggung keluarga saya.

(6) Atas alasan perubatan, saya tidak juga dibenarkan untuk membuat kerja-kerja berat.

Dengan menyusun jari sepuluh saya memohon dan merayu agar pihak tuan dapat mempertimbangkan keputusan tuan tersebut dan saya berharap pihak tuan akan memberi suatu jawapan yang adil dalam perkara ini.

Kerjasama dan Jawapan awal dari pihak tuan sangatlah saya hargai.

Yang benar,

Sgd: (Illegible).

[21] It is pertinent to point out that the plaintiff was cross-examined pertaining to the words, 'Saya sekarang ini sedar di atas kesilapan saya' that appeared in his first letter of appeal marked as exh 'D11' and the plaintiff said that those words meant that he admitted to the charges levelled against him. At p 7 of the notes of evidence, the exchange was like this:

Put: Ayat ini bermaksud awak mengaku di atas pertuduhan yang dikenakan terhadap awak?

A: Ya.

Put: Pemecatan awak adalah mengikut peraturan-peraturan di D9.

A: Ya.

[22] By way of a memo dated 11 November 1991, the defendant rejected the plaintiff's appeal. That memo was marked as exh 'D20' and it was worded thus (in its original Malay language text):

RAYUAN TERHADAP PEMBUANGAN KERJA

Surat rayuan tuan yang dialamatkan kepada Pengarah RRIM adalah dirujuk.

2. Dukacita dimaklumkan bahawa setelah menimbangkan rayuan tuan dengan sewajarnya, Tuan Pengarah telah menolak rayuan tuan. Oleh yang demikian keputusan tindakan tatatertib yang telah diambil adalah masih berkuatkuasa.

Sekian dimaklumkan.

BERKHIDMAT UNTUK NEGARA'

Sgd: (Illegible)

(ISHAK BIN HJ. WAHAB)

Seksyen Perjawatan dan Kemajuan Kakitangan.

[23] By letter dated 15 November 1991 pursuant to his dismissal, the plaintiff received a notice from the defendant to vacate his quarters at number 37D, RRIES, Sungai Buloh. That letter was worded in this way (in its original Malay language text):

> NOTIS MENGOSONGKAN KUARTERS NO 37D, RRIES, SG BULOH
>
> Adalah saya dengan segala hormatnya merujuk kepada surat Encik Ishak Hj Wahab, Seksyen Perjawatan dan Kemajuan Kakitangan RRIM kepada tuan bertarikh 24 Oktober 1991.
>
> Oleh kerana tuan telah diberhentikan dari perkhidmatan RRIM berkuatkuasa pada 1 November 1991, dengan yang demikian tuan adalah tidak layak diperuntukkan Kuarters RRIM. Sila kosongkan kuarters tersebut secepat mungkin selewat-lewatnya pada 30 November 1991.
>
> Di atas kerjasama tuan dalam perkara ini kami terlebih dahulu mengucapkan ribuan terima kasih.
>
> Sekian, terima kasih.
>
> 'BERKHIDMAT UNTUK NEGARA'
>
> Saya yang menurut perintah,
>
> Sgd: (Illegible)
>
> (BASRI BIN HAMZAH)
>
> Pegawai Pentadbir (Harta)
>
> b.p. Pengarah
>
> Institut Penyelidikan Getah Malaysia.

[24] The plaintiff refused to vacate the quarters. The defendant issued two more notices direct to the plaintiff requesting him to vacate the quarters. These two letters were dated 31 March 1992 and 17 April 1992 respectively. There was also a letter from the defendant to the plaintiff's solicitors giving notice to the plaintiff to vacate the quarters. That letter was dated 11 May 1992. Finally, the defendant through its solicitors sent a letter by way of an AR Registered dated 2 October 1992 to the plaintiff giving him notice to vacate the quarters. There was also a notice dated 12 August 1993 from the Magistrate's Court at Shah Alam requiring the plaintiff to vacate the quarters by 8 September 1993.

[25] Eventually, the plaintiff grudgingly vacated the quarters.

[26] The medical entitlement accorded to the plaintiff by the defendant was also stopped when the plaintiff was dismissed from service. See the relevant letters both dated 26 October 1991 to Reddy Klinik & Rakan-Rakan

and Klinik Drs Leela Ratos & Rakan-Rakan where the defendant informed both the clinics that the plaintiff was dismissed from service on 1 November 1991 and was thus not entitled to free medical treatment at the expense of the defendant.

[27] Md Sharif bin Kudin ('DW2') ('Sharif') testified for the defendant. In his witness statement he alluded to the procedures before the plaintiff was brought before the disciplinary action committee. This was what he said in his witness statement (see exh 'D16'):

7. Q: Please explain to the Court the procedure before a disciplinary action can be taken against an employee.

   A: First there has to be a complaint regarding the misconduct of the employee.

8. Q: Was there a complaint against the Plaintiff?

   A: Yes. There was a complaint from Plaintiff's supervisor saying that the Plaintiff was absent from work.

9. Q: Could you please refer to page 1 in (the) Additional Non-Agreed Bundle of Documents and tell the Court what is the document?

   A: It is the complaint made by Plaintiff's supervisor which states that Plaintiff had failed to attend work from 3-08-1991 until 13-08-1991. The medical certificates produced by Plaintiff were found to be fake.

10. Q: What was the next cause of action against (the) Plaintiff?

    A: A charge letter was issued to the Plaintiff.

11. Q: Could you please refer to page 3 in (the) Additional Agreed Bundle of Documents (2) and tell the Court what is the document?

    A: It is the charge letter which had been issued earlier to the Plaintiff.

12. Q: Please tell the Court after the charge letter was issued to the Plaintiff, what must he do?

    A: Within 14 days from the date he received the charge letter, Plaintiff must make a written representation to the Disciplinary Committee stating the reasons/ defence to the charge made against him.

13. Q: Did he make the written representation?

    A: Yes, he did.

14. Q: Could you please refer to page 6 in (the) Additional Agreed Bundle of Documents (2) and tell the Court what is the document?

    A: It is the written representation dated 3-09-1991 made by the

Plaintiff to the Disciplinary Committee. His defence was also in that letter.

15. Q: What did the Committee do next?

A: A Disciplinary Committee meeting will be held.

16. Q: Please explain to the Court what happened in the meeting?

A: On that date, the Secretariat presented Plaintiff's record and Plaintiff was also called to give evidence in front of the Committee.

17. Q: What was the decision of the Committee?

A: The Committee found that the Plaintiff was absent from work without authorisation or without sufficient reasons for eleven (11) days under Order 21 (4) from 3-08-1991 until 13-08-1991. The medical certificates for dates 24-07-1991, 30-07-1991, 31-07-1991, 3-08-1991, 5-08-1991 until 9-08-1991 were found to be fake. The offence is classified under Rule 4(2)(a), 4(2)(b), 4(2)(d), 4(2)(f) and 4(2)(g) and the Committee suggested the punishment of dismissal for the Plaintiff.

18. Q: What was the basis of the decision above?

A: It was made based on the Plaintiff's record, the presentation made by the Secretariat and Plaintiff's evidence.

[28] Sharif also alluded to the fact that the plaintiff testified before the disciplinary action committee. In his witness statement this was what he said:

19. Q: What did the Plaintiff testify during the meeting?

A: Plaintiff admitted that the medical certificates he had produced were indeed fake.

[29] When asked under examination-in-chief as to why the plaintiff was dismissed from service, Sharif's reply was quite emphatic. This was what he said in its original Malay language text (see p 30 of the notes of evidence):

Q: Bundle 'E' muka surat 35 (D9), hukuman buang kerja adalah hukuman yang terakhir, kenapa plaintif dibuang kerja sebagai hukuman beliau?

A: Yang Arif, yang pertama sebab RRIM adalah satu organisasi penyelidikan dan oleh sebab itu kita menekankan kepada 'accuracy' apa jua kerja-kerja penyelidikan supaya keputusan penyelidikan-penyelidikan itu tadi tidak menjejas 'accuracy'nya. Oleh yang demikian, kami berpendapat kelakuan seperti plaintif itu tadi Yang Arif tidak dapat kita terima dan sekiranya beliau dilanjutkan bekerja berkemungkinan terjejas experimen-experimen kita itu sahaja.

[30] I have set out in extenso the chronological facts that led to the dismissal of the plaintiff. The procedures adopted by the defendant in dismissing the plaintiff were above board and followed closely the provisions of the Peraturan-Peraturan Tatakelakuan Dan Tatatertib Bagi Pegawai-Pegawai Institut Penyelidikan Getah Malaysia ('RRIM Rules').

[31] Rule 26(4) of the RRIM Rules stipulates as follows:

> Jika pegawai itu tidak mengemukakan apa-apa representasi dalam tempoh yang ditentukan itu, atau jika ia mengemukakan representasi yang tidak dapat membebaskan dirinya dengan memuaskan hati Jawatankuasa Tindakan Tatatertib RRIM, maka Jawatankuasa Tindakan Tatatertib itu hendaklah terus menimbang dan memutuskan perkara membuang kerja atau menurunkan pangkat pegawai itu.

and it makes reference to the failure of making a representation by the officer within the time stipulated or if a representation by the officer was made which could not exculpate the officer to the satisfaction of the disciplinary action committee then the latter has to weigh in a balance and determine the issue of dismissal of service or a reduction in rank of the officer concerned.

[32] The word 'officer' in r 26(4) of the RRIM Rules must necessarily refer to the plaintiff herein.

[33] So, the sum total of it all is this. That by virtue of r 26(4) of the RRIM Rules, the disciplinary action committee merely considered and deliberated on the written representation of the plaintiff in exh 'D4' and there was no necessity for the disciplinary action committee to even consider the oral evidence of any witness. Yet, the disciplinary action committee considered the oral testimony of the plaintiff as reflected in the minutes of the disciplinary action committee in exh 'D18B' as reproduced earlier. But the plaintiff refuted this and said under cross-examination at p 14 of the notes of evidence that he was not given a chance to explain. This was what transpired as recorded at p 14 of the notes of evidence:

> Q: Awak setuju di dalam mesyuarat tatatertib awak telah mengaku di atas kesalahan seperti di dalam pertuduhan di D2.
>
> A: Saya tidak setuju sebab saya tidak diberi peluang untuk memberi penjelasan.

[34] In his witness statement, the plaintiff even ventured to deny that before the disciplinary action committee he had said that all the medical certificates were forged. This was what he said in his witness statement:

> 34. Q: Refer to pages 2–4 of 'Ikatan Dokumen Tambahan Yang Tidak Dipersetujui (2)' at para 1.2.2 (ii) (which) said 'Semasa disoal siasat oleh

Ahli Jawatankuasa Encik G Muniandy mengaku bahawa semua surat–surat pengesahan rawatan yang dikemukakan adalah dipalsukan'. Is that true?

A: Not true. I was not questioned at all. I was not asked even one question other than (what) I answered in question No 30. The minutes of the Domestic Inquiry was not signed by me goes to show that I had no knowledge.

[35] Again in his witness statement, the plaintiff said that not a single witness from the defendant attended the disciplinary action committee hearing. Dato' Dr Ong too was not present at the hearing of the disciplinary action committee. No witness from the Klang Hospital was called at the hearing of the disciplinary action committee. However, by virtue of r 26(4) of the RRIM Rules there was no necessity for the disciplinary action committee to hear the oral evidence of any witness. According to Sharif, the plaintiff was called to give evidence before the disciplinary action committee. Sharif, however, was unable to recall when the plaintiff was called to give evidence and neither was he able to remember how long the plaintiff gave evidence before the disciplinary action committee. This was what Sharif testified under cross-examination at p 32 of the notes of evidence (in its original Malay language text) in this way:

Mesyuarat jawatankuasa bermula jam 3.00 petang. Saya tidak ingat bila plaintif dipanggil masuk. Saya tidak ingat berapa (lama) plaintif beri keterangan.

[36] As to the reason for not calling Dato' Dr Ong at the disciplinary action committee, Sharif gave the reason when he was re-examined at p 34 of the notes of evidence in this way:

Dr Ong tidak dipanggil pada mesyuarat jawatankuasa sebab 'the officer who is directly involved will not be called to testify'. Kita takutkan dia bias.

[37] The first charge against the plaintiff was for not attending work between 3 August 1991 to 13 August 1991. Here, the plaintiff's punch card for the month of August 1991 as per exh 'D5' would be a very good piece of evidence. The plaintiff under cross-examination testified that on those days — meaning between 3 August 1991 to 13 August 1991, he punched his punch card and he then informed the engineer before he left. The plaintiff said that he worked on those days. When the plaintiff was confronted with the complaint of Dato' Dr Ong in exh 'D13' which showed that the plaintiff was not working on those days, the plaintiff was adamant and said that he will inform his engineer before he left for the hospital. The plaintiff did not agree that on those days—between 3 August 1991 to 13 August 1991, he was not working. But, no proof was shown by the plaintiff that he was working

on those days. The punch card for the month of August 1991 as per exh 'D5' and the complaint of Dato' Dr Ong in exh 'D13' showed in reality that the plaintiff was absent on those days. This was my judgment and I so hold accordingly.

[38] Even the 'time slips' in exh 'D7' as found in bundle 'E' showed that:

(i) on 7 August 1991 at 9am to 1.10pm, the plaintiff purportedly was at the Klang Hospital;

(ii) on 8 August 1991 at 8.45am to 1pm, the plaintiff purportedly was at the Klang Hospital; and

(iii) on 9 August 1991 at 8am to 1.30pm, the plaintiff purportedly was at the Klang Hospital.

[39] But the authenticity of the 'time slips' in exh 'D7' for the month of August was questioned by the defendant. The records of the Physiotheraphy Department of the Klang Hospital in exh 'D6' that was alluded to earlier categorically confirmed that the plaintiff was last seen on 2 August 1991. If it was true that the plaintiff had genuine 'time slips' and not forged 'time slips' for 7 August 1991, 8 August 1991 and 9 August 1991, the onus was on him to prove it. There was ample opportunity for the plaintiff to discharge the onerous burden but he failed to do so.

[40] The plaintiff certainly knew the charges levelled against him. He had been 'given the opportunity of ascertaining the relevant issues, and being informed of the nature and content of the material which is being considered against him' (*Dixon v Commonwealth of Australia* (1981) 3 ALD 289; [1981] 61 ALR 173). In short, the plaintiff knew what the case against him was all about (*B Surinder Singh Kanda v The Government of the Federation of Malaya* [1962] MLJ 169; [1962] AC 322; *Leong Pui Kun v Lembaga Jurutera Malaysia* [2002] 4 AMR 4631; *Chong Kok Lim & Ors v Yong Su Hian* [1979] 2 MLJ 11; and *District Plantation Services Sdn Bhd v Ahmad Nazri Adnan & Anor* [2001] 1 CLJ 25). It must be recalled to mind that in his examination-in-chief, the plaintiff testified that his reply to the charges by way of a representation as per exh 'D4'; was prepared by the RRI Union (see p 4 of the notes of evidence). Thus, the plaintiff was in safe hands when his representation was prepared.

[41] Under cross-examination the plaintiff testified that in the morning before he left for the Klang Hospital, he would first punched his punch card for the month of August 1991. A perusal of the August punch card at exhibit 'D5' showed that there was a recording for 1 August 1991 at 6.30am and under category of 'Kenyataan' the word 'Doktor' appeared. Again on 2 August 1991 under the category of 'Kenyataan', the word 'Doktor' also

appeared. Two Sundays were recorded on the punch card for the month of August 1991 and that would be on 4 August 1991 and 11 August 1991. According to Dato' Dr Ong 'normally a boilerman does not work on Sundays unless there are steam required from the boiler' (see p 23 of the notes of evidence). Dato' Dr Ong was then asked the following question and he gave the answer thereto (see p 23 of the notes of evidence):

Q: Are they required to punch in on Sundays?

A: They are required to punch in even on Sundays if they are asked to work. In D5 under the month of August 1991 the plaintiff did not punch in on Sundays.

[42] Of significance is this. That the plaintiff denied that the punch card for August 1991 was his. His cross-examination showed the exchanges between him and learned counsel (see p 6 of the notes of evidence):

Q: Bundle 'F' shown to witness at page 1 particularly for August 1991. Just now, you said you punched the card at 6.30am and then went to the hospital, now punch card tunjuk awak tidak datang kerja pada 3.8.1991 hingga 13.8.1991.

A: This is not my punch card because if it is my punch card I would definitely punched it after 6.15 am to 6.30am.

Q: Sila rujuk kepada nama yang tertera di punch card untuk bulan Ogos 1991 (see bundle 'F'), sila baca?

A: G. Muniandy.

Q: G. Muniandy adalah nama awak dan punch card ini adalah punch card awak?

A: The name is correct. The card is not mine.

[43] The plaintiff was cross-examined further on the punch cards found in exh 'F'. The exchanges went like this (see pp 9–10 of the notes of evidence):

Bundle 'F' muka surat 1 dirujuk kepada saksi. Semalam awak setuju nama awak tertera di punch card tersebut, tetapi kamu tidak setuju bahawa punch card ini adalah punch card awak. Jadi saya tanya awak. Adakah terdapat pekerja lain yang bernama G Muniandy di Bahagian Fizik dan Kejuruteraan?

A: Saya tidak tahu..

Put: Punch card di muka surat 1 bundle 'F' adalah awak punya

A: Nama dalam kad menunjukkan nama saya tetapi punch card bukan saya punya.

Q: Punch cards June 1991 dan July 1991 adakah awak punya?

A: Benar punch cards untuk bulan June 1991 dan July 1991 adalah saya punya.

Q: Jadi punch card awak untuk bulan Ogos 1991 bentuk macam mana?

A: Perkara ini berlaku 16 tahun dahulu dan oleh itu saya tidak dapat ingat.

[44] How convenient for the plaintiff to reply in the way in which he did. In my judgment, it was an evasive reply to extricate himself from his own predicament. A

[45] Learned counsel for the plaintiff submitted that the total number of days that the plaintiff was absent from his work were six days, namely, on 3 August 1991, 5 August 1991, 6 August 1991, 10 August 1991, 12 August 1991 and 13 August 1991 and not 11 days as alleged by the defendant, namely, from 3 August 1991 to 13 August 1991. For this submission, exh 'D5' containing the punch card for August 1991 was referred to. It was also submitted by learned counsel for the plaintiff that the month of August 1991 included two Sundays which fell on 4 August 1991 and 11 August 1991 It was emphasised by learned counsel for the plaintiff that the plaintiff did not work on Sundays notwithstanding the evidence of Dato' Dr Ong that boilermen were required to work on Sundays. Again, emphasis was laid by learned counsel for the plaintiff that the plaintiff had time slips for 7 August 1991, 8 August 1991 and 9 August 1991 and so the plaintiff was covered for those three days when he was absent. In rebuttal, learned counsel for the defendant submitted that the plaintiff's time slips for 7 August 1991, 8 August 1991 and 9 August 1991 were forged and that the plaintiff was absent from work on those three days. It must be borne in mind that Dato' Dr Ong's complaint alluded to the plaintiff's absence from work from 3 August 1991 to 13 August 1991 and that must naturally take into account that the plaintiff should have worked on two Sundays. Even Dato' Dr Ong's witness statement alluded to the plaintiff's absence from work from 3 August 1991 to 13 August 1991 which meant that the plaintiff should have worked on two Sundays. B C D E F

[46] All these submissions by learned counsel for the plaintiff in regard to the punch card for the month of August 1991 was for the purpose of arguing that since the plaintiff was absent for six days in the month of August 1991, the plaintiff should be charged under r 21(3) of the RRIM Rules which would not result in his dismissal. Rule 21(3) of the RRIM Rules states as follows: G H

> 21. Tidak hadir bertugas tanpa cuti.
>
> (3) Jika seseorang pegawai tidak hadir bekerja selama tempoh tidak lebih daripada tujuh hari kerja dalam sesuatu bulan kalender, maka atas laporan Ketua Bahagian, Jawatankuasa Tindakan Tatatertib boleh dalam hal-hal di mana difikirkan adalah tidak patut diambil tindakan tatatertib dengan tujuan membuang kerja, membicarakan pegawai itu mengikut Peraturan RRIM 25 dan mengenakan apa-apa hukuman I

yang difikirkannya patut dan dalam hal demikian ia tidaklah berhak mendapat apa-apa gaji atau saraan selama tempoh yang ia telah tidak hadir itu.

[47] I now make the following finding of facts:

(a) that the plaintiff was absent from work for eleven days including two Sundays, namely, from 3 August 1991 to 13 August 1991;

(b) that the 'time slips' dated 7 August 1991, 8 August 1991 and 9 August 1991 were forged;

(c) that the punch card for the month of August 1991 was the plaintiff's punch card and no one else;

(d) that the plaintiff's representation in exh 'D4' was considered by the disciplinary action committee (see Sharif's witness statement in exh 'D16' in particular question 14 and the answer thereto); and

(e) that the plaintiff was accorded an oral hearing before the disciplinary action committee (see Sharif's witness statement in exh 'D16' in particular questions 18 and 19 and the answers thereto together with the minutes of the disciplinary action committee in exh 'D18B').

[48] The plaintiff's stand was this. That the decision making process of the disciplinary action committee that led to the plaintiff's dismissal was said to be fatally flawed. In the alternative, the plaintiff contended that there has been a flagrant disregard of the elementary rules of natural justice, in particular the audi alteram partem rule.

[49] One must not forget that the hearing before the disciplinary action committee cannot be regarded as a hearing in a court of law. The standards applicable to the judiciary should not be mechanically applied to administrators who sat in the disciplinary action committee. The procedures set out in the RRIM Rules must be complied with. The punishment meted out to the plaintiff by the disciplinary action committee cannot be substituted by this court.

[50] In *Ng Hock Cheng v Pengarah Am Penjara & Ors* [1998] 1 MLJ 153; [1998] 1 CLJ 405, the Federal Court had occasion to deal with the question of whether the court has the jurisdiction to review suitability of punishment meted out by the disciplinary tribunal. In answering the question in the negative, Peh Swee Chin FCJ (as he then was) aptly said at p 159 (MLJ); p 413 (CLJ) of the report:

Just like a professional body being the best tribunal to judge the seriousness of misconduct of its members, in a similar vein, an employer, including a government is the best person to judge similarly the seriousness of misconduct of an employee.

[51] Now, *Ng Hock Cheng* was an appeal against the order of the Court of Appeal affirming the decision of the High Court in dismissing the appellant's action for a declaration that his dismissal was void. The appellant was a chief storekeeper of the Prisons Department at Kamunting in Taiping. As it transpired, the appellant had incurred heavy debts and had, therefore, become liable to disciplinary proceedings under the Public Officers (Conduct and Discipline) (Chapter D) General Orders 1980. After considering the appellant's representations, the Public Services Commission ('the second respondent') had dismissed the appellant. Before the Federal Court, the appellant's primary contention was that the punishment meted out by the second respondent was too severe; and that he should have been given a punishment lesser than a dismissal. The consequential question of law raised in the appeal before the Federal Court was whether the courts have the power to interfere with the punishment meted out by the second respondent. The Federal Court speaking through Peh Swee Chin FCJ (as he then was) held that (see the headnotes at p 406 (CLJ)):

(1) A public officer is entitled to impugn any allegation of misconduct made against him by way of judicial review. If he succeeds, any order of punishment, including an order of dismissal, may be declared invalid or void. If he fails, any order of punishment made remains, and there should be no further review on such order of punishment. To so further review judicially would be against the concept (in the case of an order of dismissal) that there should not, generally, be any employment against the will of an employer or employee.

(1a) Consequently, both the High Court and the Court of Appeal, after having upheld the second respondent's finding of misconduct against the appellant, were right in refusing to judicially review or otherwise interfere with the order of dismissal meted out by the second respondent.

(1b) The disciplinary tribunal of a professional body is the best judge of the seriousness of the misconduct of its members; it would require an exceptional case to enable a court to interfere with its decision in respect of punishment. Likewise, an employer, including a government, is the best person to judge the seriousness of the misconduct of its employees.

(1c) In this respect, the majority judgment of the Court of Appeal in *Tan Tek Seng @ Tan Chee Meng v Suruhanjaya Perkhidmatan Pendidikan & Anor* [1996] 2 CLJ 771, could not stand with the instant decision of the Federal Court. The dissenting judgment in *Tan Tek Seng @ Tan Chee*

Meng v Suruhanjaya Perkhidmatan Pendidikan & Anor was, therefore, right in restating the principle that: the test is not what the Court of Appeal or the High Court thinks should be the appropriate penalty. Whether dismissal or a lesser penalty (like a reduction in rank) was appropriate is not for the court to say. The court must not substitute its own views as to what is the appropriate penalty (for the employee's misconduct) for the view of the particular employer concerned.

(Appeal dismissed).

[52] In the course of writing his judgment in the case of *Ng Hock Cheng*, Peh Swee Chin FCJ (as he then was) made reference to the case of *Tan Teck Seng @ Tan Chee Meng v Suruhanjaya Perkhidmatan Pendidikan & Anor* [1996] 1 MLJ 261; [1996] 2 CLJ 771. This was what His Lordship said at pp 157–158 (MLJ); p 411 (CLJ) of the case of *Ng Hock Cheng*:

In *Tan Tek Seng* case, a senior assistant of a primary school was charged in court for misappropriating a sum of RM3,179 being unpaid salary of the school gardener who was absent from duty. Tan had subsequently made good the sum. The conviction and a sentence of six months' imprisonment of the relevant sessions court for Tan were varied, on appeal, to a finding of guilt with an order of binding over for good behavior for a period of three years. Disciplinary proceedings were then instituted–where it was decided that he be dismissed from service. Tan then filed a writ action seeking the usual declarations that his dismissal be declared void and invalid; that arrears of salary be determined etc. The action was dismissed by the High Court. On appeal to the Court of Appeal, (quoting here only one of several points decided there, as being relevant to the said question in the instant appeal), it was held in a majority judgment in allowing the appeal that the disciplinary authority must, when deciding what punishment it ought to impose on the particular public servant, act reasonably, and fairly, that if it acted arbitrarily or unfairly or imposed a punishment that was disproportionate to the misconduct, its decision on the punishment was liable to be quashed or set aside. The Court of Appeal then by a majority substituted the order of dismissal in effect with an order that the senior assistant of the primary school be reduced in rank and salary to those of an ordinary teacher.

It was held by the dissenting judge that the court should not substitute its own view as to which was the appropriate penalty for the employee's misconduct, and it was held further whether the punishment should be a dismissal or a lesser penalty like a reduction in rank was not for the court to say.

[53] His Lordship Peh Swee Chin FCJ (as he then was) continued to say at p 158 (MLJ); p 411 (CLJ) of the case of *Ng Hock Cheng*:

It should be emphasised in order to avoid confusion, that the said question for which leave to appeal to this court was granted was in truth as to whether the High Court had the jurisdiction or power to vary any penalty imposed by the Public Services Commission as contradistinguished from another related but no longer

important question for the purpose of the instant appeal of whether the appellant had or had not been guilty of any misconduct which could render him liable in the first place to any penalty or punishment as provided by the said General Orders.

After the High Court had judicially reviewed and upheld the disciplinary authority's finding of misconduct or breach of any provision of the code of conduct under the said General Orders, in regard to any further and consequential order of punishment or penalty as prescribed by the 'General Orders' aforesaid and imposed on the public officer in question, the High Court was right in not judicially reviewing such consequential order of dismissal or otherwise interfering with such order. The Court of Appeal was also right for not interfering with the same for reasons which we will discuss as follows.

[54] I am bound by the decision of the Federal Court in the case of *Ng Hock Cheng*. The punishment meted out to the plaintiff by the disciplinary action committee cannot be disturbed. The disciplinary action committee was in the best position to judge the seriousness of the misconduct of the plaintiff and not this court.

[55] Was there really a flagrant breach of the rules of natural justice, in particular the audi alteram partem rule? I would answer this question in the negative.

[56] When we talk about fair procedure, it brings to mind the principle that both sides should be heard. Audi alteram partem (hear the other side). It is part and parcel of the principles of natural justice. In America, a fair hearing before an impartial tribunal is a requirement of due process. In England and in the Commonwealth, freedom from bias falls under the category of the rules of natural justice and it is enshrined in the maxim *nemo judex in causa sua*.

[57] At common law, 'There is no general rule of English law that reasons must be given for administrative (or indeed judicial) decisions' and that reasons were said not to be required by the rules of natural justice (Akehurst, Michael '*Statements of Reasons For Judicial And Administrative Decisions*' [1970] 33 MLR 154; and SA De Smith, FBA, *Judicial Review of Administrative Action* (3rd Ed, 1973) at p 128). From these simple propositions, a flurry of cases surfaced. Thus, the Minister of National Revenue need not give his reasons for disallowing expenses under his discretion conferred by the Income War Tax Act (*Minister of National Revenue v Wrights' Canadian Ropes, Ltd* [1947] AC 109). The Minister of Health need not give reasons when determining an appeal under the Local Government Superannuation Act (*Wilkinson v Barking Corporation* [1948] 1 KB 721, 728). The Agricultural Land Tribunal need not give reasons for a decision under the Agricultural Holdings Act 1948 (*Davies v Price & Ors* [1958] 1

A WLR 434). The Secretary of State for the Home Affairs need not give reasons for refusing an alien an extension of permission to stay in the United Kingdom (*Schmidt & Anor v Secretary of State for Home Affairs* [1969] 2 Ch 149 at pp 171, 173). The Gaming Board need not give reasons for refusing a certificate under the Gaming Act (*Regina v Gaming Board for Great Britain, Ex parte Benaim And Khaida* [1970] 2 QB 417). An education authority need not give reasons for the dismissal of a school teacher (*Malloch v Aberdeen Corporation* [1971] 1 WLR 1578 at p 1582).

[58] But the dissenting judgment of the Master of the Rolls–Lord Denning, in *Breen v Amalgamated Engineering Union & Ors* [1971] 2 QB 175 showed that, at common law, reasons ought to be given. In that case, a district committee of a union refused to confirm the election of Breen by his fellow workers to the position of shop steward. When Breen protested the decision and requested for the reasons, the first reason set forth was the resignation of Breen in 1958 following a charge of misappropriation of funds. On this charge, Breen was cleared. The judge at the first instance held that this incident was not part of the decision of the committee and the majority of the Court of Appeal refused to disagree with this finding. However, Lord Denning MR dissented and in the course of his judgment His Lordship said that reasons must be given whenever it is fair to do so. His Lordship also said that reasons need not be given if a privilege is denied, but reasons must be given if a man's livelihood or property rights were to be affected and that it would not be fair to deprive a person of some right or interest or some legitimate expectation without a hearing or without reasons being given. His Lordship said at p 191 that:

> The giving of reasons is one of the fundamentals of good administration.

[59] Then there is a Court of Appeal's decision of *Pepys v London Transport Executive* [1975] 1 WLR 234 which held that the Lands Tribunal should provide reasons if it intends to take the unusual course of awarding costs against a successful party.

[60] In Canada, in the case of *Rosenberg v British Columbia Turkey Marketing Board, Ex parte Rosenberg* (1967) 61 DLR (2d) 447 at p 450, the court was of the view that there was no duty, at common law, to give reasons.

[61] But in other jurisdictions, there appear to be a movement towards insisting upon reasons. Thus, in *Gill Lumber Chipman (1973) Ltd v United Brother-hood of Carpenters and Joiners of America Local 2142* (1973) 42 DLR (3d) 271, the court held that the Industrial Relations Board should adopt a

practice of giving reasons when requested particularly on complicated issues involving an alleged excess of jurisdiction, although reasons were not required to be given as a matter of law.

[62] In *Glendenning Motorways Inc v Royal Transportation Ltd* (1975) 59 DLR (3d) 89, the court stated that it was desirable for a Highway Traffic and Motor Transport Board to give reasons for its decision but the court, at the same time, stated that in the absence of a statutory requirement that this was to be done then the court could not invalidate a decision if reasons were not given.

[63] The sum total of it all is this. That at common law the bulk of the authority is in favour of the view that there is no duty to provide reasons. However, there is now a growing body of precedents which support the desirability that reasons ought to be given.

[64] When you talk of natural justice, you are making reference to the idea of a fair hearing procedure. Thus, no one should be condemned unheard. And if some action is intended to be taken against an individual that would adversely affect his right or interest, then that individual ought to be given an opportunity of defending himself. Today, there is a growing awareness of judges all over the world to apply natural justice generously in administrative cases. In short, it is correct to say that the requirement of natural justice is advanced by the judges' themselves and, so it has come to be known as a judge-made requirement.

[65] An order to infuse the principle of natural justice in an administrative action, the court has labelled such administrative action as quasi-judicial. So, anyone who sits in judgment must act according to natural justice (*Cooper v The Board of Works for the Wandsworth District* (1863) 14 CB (NS) 180; 143 ER 414 and *Board of Education v Rice & Ors* [1911] AC 179).

[66] Interestingly, the Privy Council in *Nakkuda Ali v MF De S Jayaratne* [1951] AC 66, took a narrower approach to the application of natural justice. There, a licensing system for dealers in textiles was introduced in Ceylon where the controller could cancel any licence if he had (see p 66 of the report) 'reasonable grounds to believe that any dealer is unfit to be allowed to continue as a dealer'. Using this licensing system, the controller cancelled the licence of the appellant without giving him any hearing. The Privy Council upheld the cancelling of the appellant's licence as valid for two reasons. Firstly, no one had a legal right to get a licence because a licence was a privilege and not a right and so there was no necessity for a hearing. Secondly, the Privy Council applied vigorously the words of the statute and held that there was no procedure included therein for a hearing and that the controller

was under no duty to give a hearing to the appellant when his licence was about to be cancelled. So, it can be surmised that the Privy Council relied entirely on the bare words of the statute in order to deny hearing to the appellant licensee.

[67] In *Regina v Metropolitan Police Commissioner, Ex parte Parker* [1953] 1 WLR 1150, the statute gave the Commissioner of Police the power to revoke the licence of a taxi-cab and the court held that the Commissioner was merely exercising a 'disciplinary authority' and so, no hearing was required.

[68] In *Ex parte Fry* [1954] 1 WLR 730, a fireman was dismissed without a hearing and the court upheld the decision by stating that it was purely a matter of discipline.

[69] Then came the celebrated case of the House of Lords in *Ridge v Baldwin & Ors* [1964] AC 40. There, the Chief Constable of Borough had been tried on some criminal charges and he was acquitted. The court in acquitting him made some adverse remarks on his conduct. This led to the watch committee summarily dismissed him after thirty three years' of service. The chief constable challenged the order of dismissal on the ground that the watch committee failed to observe natural justice. The House of Lords by a majority quashed the watch committee's order and declared that the dismissal of the chief constable was null and void.

[70] The leading judgment of *Ridge v Baldwin* was delivered by Lord Reid. According to His Lordship at p 66 of the report 'an officer cannot lawfully be dismissed without first telling him what is alleged against him and hearing his defence or explanation'. His Lordship ruled that *Nakkuda Ali* was not a good authority to follow because it was based on a misapprehension of Atkin LJ's dictum (see p 78 of the report) that 'the duty to act judicially' should be 'superadded' to the 'authority to determine questions affecting the rights of the subjects'. His Lordship also ruled at p 79 of the report that the watch committee should 'have informed the constable of the grounds on which they propose to proceed and have given him a proper opportunity to present his case in defence'.

[71] In 1964, the Privy Council decided the case of *Vidyodaya University of Ceylon & Ors v Silva* [1964] 3 All ER 865 without relying on *Ridge v Baldwin* and decided purely by applying the common law rule of master and servant relationship. In *Silva*, the university was empowered to dismiss a teacher only on specified grounds of incapacity or conduct which rendered the teacher unfit to teach in the university. There was also no statutory provision specifically prescribing the right of hearing to the teacher before his dismissal. So, the university dismissed the professor without serving any charges on him

and without giving him a hearing. The professor argued before the Privy Council that the university ought to have given him a hearing as it was acting judicially in terminating his service. But the Privy Council rejected such an argument and held that it was a case of a master-servant relationship and therefore no hearing by the employer was necessary. The Privy Council said at p 874 that, 'where a master employs a servant the latter is not regarded as the holder of an office and, if the contract is terminated, there are ordinarily no questions affecting status or involving property rights'. The Privy Council held that what the university did was correct and that there was no breach of statutory duty on the part of the university.

[72] Here, the plaintiff argued that the right to be heard must be construed to mean the right to be heard orally. The defendant argued otherwise and relied on the Privy Council's case of *Najar Singh v Government of Malaysia & Anor* [1976] 1 MLJ 203. In that case the appellant was a Sergeant Major in the police force and he was served with an order of detention for two years by the Minister of Home Affairs under s 8(1)(a) of the Internal Security Act 1960. He was detained on 7 June 1971 and he was unconditionally released on 25 January 1972. While he was being detained, a show cause letter dated 5 July 1991 was sent to him by the Inspector General of Police as to why he should not be dismissed from the Police Force. The appellant sent a reply forthwith. Viscount Dilhorne who wrote the judgment of the Board observed as follows (see p 203 of the report):

> Their Lordships are ignorant of the reasons why the Inspector General wrote to him and of the contents of his reply as they were not disclosed in the courts.

[73] Here, however, unlike *Najar Singh*, the plaintiff's charges and the plaintiff's reply to the charges were made known to the court.

[74] Reverting back to the facts of the *Najar Singh*, the appellant sought a declaration from the High Court that his dismissal from the police force was void and that an order for payment to him of the pay, allowances and emoluments as a Sergeant Major be given to him from 18 August 1971. The High Court dismissed his claim. The Federal Court also dismissed his appeal. With leave, he then proceeded to the Privy Council.

[75] Inter alia, in the Privy Council, the appellant argued that his dismissal was contrary to natural justice in that he was not afforded a reasonable opportunity of being heard before he was dismissed. However, the Privy Council rejected the appellant's plea that there was a denial of natural justice to him in the absence of an oral hearing.

[76] The Privy Council's decision in *Najar Singh* categorically laid down the law that in no case was an oral hearing required as part and parcel of natural justice.

[77] Again, in the case of *Zainal bin Hashim v Government of Malaysia* [1979] 2 MLJ 276, a police officer who was dismissed from the police force claimed that his dismissal was contrary to natural justice because he was not given an opportunity of making oral representations notwithstanding the fact that he had made written representations. The Privy Council rejected his appeal for the same reasons given in *Najar Singh*.

[78] In *Ghazi bin Mohd Sawi v Mohd Haniff bin Omar, Ketua Polis Negara, Malaysia & Anor* [1994] 2 MLJ 114, a police inspector was dismissed from service. He was served with a charge sheet and he was called upon to exculpate himself through a written representation. He dutifully sent a written representation but he was nevertheless dismissed. He then challenged the order of dismissal on the ground that there was a breach of natural justice because he had not been given an oral hearing. The Federal Court rejected his appeal on two main grounds. Firstly, the Federal Court followed the Privy Council rulings in *Najar Singh* and in *Zainal bin Hashim* to the effect that an oral hearing is not an essential element of natural justice. Secondly, that the disciplinary authority has religiously followed the relevant service regulations which have legislative effect and so no words can be added to these regulations.

[79] Again, the same issue was considered by the Court of Appeal in *Raja Abdul Malek Muzaffar Shah bin Raja Shahruzzaman v Setiausaha Suruhanjaya Pasukan Polis & Ors* [1995] 1 MLJ 308. In that case, charges of corruption and dereliction of duty were made against the plaintiff. He filed a written statement explaining the charges made against him. He was then dismissed from service. He alleged that he had claimed for an oral hearing but it was not given to him. He then challenged his dismissal on the ground that the denial of an oral hearing infringed the duty of the disciplinary authority from acting fairly as provided for by art 135(2)of the Federal Constitution. The Court of Appeal rejected all his contentions and ruled at p 316 that the 'right to be heard does not in all cases include the duty to afford an oral hearing'.

[80] Here, the charges were forwarded to the plaintiff and the plaintiff had acknowledged receipt thereof. The plaintiff too made a representation to the defendant which representation was delayed by two days and notwithstanding the delay, the defendant considered the representation in its deliberation. The minutes of the disciplinary action committee showed that the plaintiff was accorded an oral hearing where he admitted that all the medical certificates were forged. Under cross-examination, in the present

case, Sharif confirmed that the plaintiff gave evidence orally. The memo that relayed the information that the plaintiff was dismissed was received by the plaintiff. The written appeals by the plaintiff against his dismissal were rejected by the defendant. All these showed that there were compliance with the rules of natural justice. Not a scintilla of injustice against the plaintiff can be detected here. The disciplinary action committee, on the authority of the Federal Court case of *Lembaga Tatatertib Perkhidmatan Awam Hospital Besar Pulau Pinang & Anor v Utra Badi a/l K Perumal* [2001] 2 MLJ 417; [2001] 2 CLJ 525, was not even required to make a finding of guilt and was not even required to give reasons.

[81] It is my judgment that there were no merits in the plaintiff's claim. The disciplinary action committee had assiduously followed the RRIM Rules and no fault should be laid on their door.

Plaintiff's claim dismissed with costs.

Reported by Kanesh Sundrum